IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2741 of 2007
Date of Decision: 28.8.2007

K.D. Sharma and another ....Appellant

Versus

Ramesh Chander ...Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Govind Goel, Advocate, for the appellants.

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for possession by way of ejectment of the defendants after termination of tenancy in terms of the Transfer of Property Act, 1882, was decreed.

As per the case set up by the plaintiff, the defendant-appellants were inducted as tenants vide lease deed dated 8.2.1993 at the monthly rent/lease of Rs.1200/- p.m. The lease in favour of the defendant-appellants was terminated by giving one month's notice on 7.5.1995, but since the premises was not vacated, the present suit was filed by the plaintiff alleging therein that the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973, are not applicable to the building in dispute as the building has not completed 10 years of its construction.

In reply, it is the stand of the defendants that the lease deed is not admissible in evidence for want of stamp and registration and that no notice was received by the defendants.

To prove the date of construction of the building,

the plaintiff has examined PW1- Chuni Lal, Junior Engineer in the office of the Haryana Urban Development Authority, Ambala, who has produced the record pertaining to the property in question. He has produced a photocopy of the DPC certificate issued on 18.8.1997 Exhibit P.1. The completion certificate produced is Exhibit P.2 dated 28.7.1988. Thus, both the Courts below have recorded a concurrent finding that on the date when the present suit was filed, 10 years after the date of construction of the building, had not been completed.

The lease deed dated 8.2.1993 is Exhibit PW2/E and rent deed dated 19.3.1989 is Exhibit PW2/F. The lease deed is between the plaintiff and the appellants. Earlier the rent note dated 19.3.1989 Exhibit PW2/F was executed and the suit property was let out to defendant No.1. When defendant No.2 joined as tenant, the lease deed Exhibit PW2/E was executed between the parties. It was found that such document stands admitted by the defendants. To prove the termination of tenancy, the plaintiff himself appeared as PW2 and proved the notice dated 7.7.1995 Exhibit PW2/A. Another notice dated 7.5.1996 Exhibit PW2/B served through his counsel was also produced on record.

In support of proof of serving of notice of termination of tenancy, Exhibit P.3 was produced. It is the registered envelope addressed to defendant No. 1 at his residential house which was returned as unclaimed. The address mentioned on the envelope of the registered post is the same as is tenanted premises. Thus, it was found that if the notice sent by registered post is properly addressed, it could be presumed to be delivered to the addressee and there is no obligation to proof the service of notice by examining the Postman. On the basis of such

finding, a decree was passed by the learned trial Court, which was affirmed in appeal by the learned first Appellate Court.

Learned counsel for the appellants has vehemently argued that the plaintiff has not produced the Postman, who has given the report `unclaimed' on the registered envelope. In the absence of examination of the Postman, in terms of Section 67 of the Evidence Act, 1873, the endorsement cannot be deemed to be proved. Still further, the defendant as a witness has denied the receipt of any registered envelope, therefore, it was obligatory for the plaintiff to examine the Postman to prove as to why and how the registered envelope was returned unclaimed. It is also contended that the suit has been filed on the basis of notice dated 7.7.1995, whereas another notice was issued on 7.5.1996 Exhibit PW2/A. Such notice has the effect of revocation of the earlier notice of termination of the tenancy. The suit has not been filed on the basis of notice dated 7.5.1996 and, therefore, the defendant-appellants cannot be ordered to be evicted. It is also argued that the notice of termination of tenancy can be issued by lessor himself or under his instructions. However, the plaintiff, while appearing as a witness has denied the authority of his counsel to serve notice. Therefore, on the basis of such notice, the tenancy of the appellants cannot be said to be terminated. It is also argued that the plaintiff has sought eviction from the part of the ground floor, whereas he is in possession of the entire ground floor. Therefore, the suit is bad on account of partial eviction. In support of his arguments, learned counsel for the appellants has relied upon **Vinod Shashank Chakor Pvt. Ltd. v. H.D. Merchant (dead) through LRs, 2005(1) RCR (Civil) Page 9**, a Single Bench judgment of the Bombay High Court and **S. Gopal Reddy v. State of**

A.P. 1996(4) SCC 596.

Vide rent note dated 19.3.1989 Exhibit PW2/F, the premises consisting of drawings, dinning, bed room, kitchen and bath room/W.C., was rented out at the monthly rent of Rs.900/-. It was mentioned therein that one bed room adjoining the bathroom under the stairs will remain with the landlord. Subsequently, the lease deed dated 8.2.1993 Exhibit PW2/E, was executed with K.D.Sharma, appellant No. 1 and his wife Sunit Sharma, appellant No. 2, in respect of the same premises, but at the monthly rent of Rs.1200/- p.m.

The argument that the plaintiff has sought eviction of the part of the tenanted premises, is not tenable. Firstly, there is no issue framed on such plea nor any finding has been recorded nor any argument has been raised before the learned Courts below. Therefore, such question, which is primarily a question of fact, cannot be permitted to be raised for the first time in second appeal. Still further, the learned counsel for the appellants could not refer to any evidence in support of his plea that the entire ground floor has been let out to the appellants.

The plaintiff has served notice under registered post Exhibit P.3, addressed to appellant No.1, with the address of the demised premises i.e. House No. 438, Sector-7, Urban Estate Ambala City. Exhibit P.4 is the notice sent to appellant No. 2 with the address `Lecturer, Government Women Polytechnic, Near Sessions House, Ambala City". Exhibit P.5 is the notice addressed to appellant No. 2 at the residential address i.e. the demised premises. Exhibit P.6 is the notice addressed to appellant No. 1 with the address "Basket Ball Coach, Government Sports Academy, Ambala Cantt". The registered envelopes addressed at the

residential address of the appellants i.e. demised premises have been returned with the report "unclaimed", whereas the notice Exhibit P.4, addressed to appellant No. 2 has been returned with the remarks that she is on leave. Exhibit P.6 is purportedly received by one Shiv Nath. It could not be disputed by the learned counsel for the appellants that the residential addresses mentioned in the notice on the registered envelope are the correct residential addresses.

In **M/s Madan and Co. v. Wazir Jaivir Chand, AIR 1989 SC 630**, the Hon'ble Supreme Court has held that if the notice is returned to the landlord due to non availability of the tenant or the person authorised by the tenant to receive such notice, the landlord has no further obligation to get it affixed on the demised premises. All that a landlord can do to comply with the statutory requirement is to post a pre-paid registered letter (acknowledgment due or otherwise), containing the tenant's correct address. Once, he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under Section 27 of the General Clauses Act, 1897. Under the Rules of post office, if the Postman is unable to deliver it on his first visit due to non availability of the addressee or a person authorised to receive the same, the practice is for the Postman to attempt to deliver it on the next one or two days also before returning it to the sender. The responsibilities of the Postman cannot be equated to those of a process server entrusted with the responsibilities of serving the summons of the Court under Order 5 of the Code of Civil Procedure.

In **Anil Kumar v. Nanak Chandra Verma, AIR 1990 SC 1215**, the Hon'ble Supreme Court held that bare statement on oath

by the tenant denying the service is not sufficient. Similar is the judgment in **Basant Singh and another v. Roman Catholic Mission, AIR 2002 SC 3557**. The Hon'ble Supreme Court in **P.T. Thomas v. Thomas Job, (2005) 6 SCC 478** held to the following effect:-

> "The High Court, in our view, has also misinterpreted Section 27 of the Post Office Act, 1898. The requirement of Section has been complied with in this case. The reasoning of the High Court on this issue is not correct and not in accordance with factual possession. In the notice issued, the Postman has made the endorsement. This presumption is correct in law. He had given notice and intimation. Nevertheless, the respondent did not receive the notice and it was returned unserved. Therefore, in our view, there is no obligation cast on the appellant to examine the Postman as assumed by the High Court. The presumption under Section 114 of the Evidence Act, 1872 operates apart from that under the Post Office Act, 1898."

In **Amrit Lal Sharma v. Narinder Sharotri, 2002 (2) Civil Court Cases (P&H) 30,** the argument that the Postman is required to be examined to prove the endorsement on the registered envelope, has not been accepted. The Postman has given his report in discharge of his official duties. The said report carries presumption of correctness. Once the address of the appellants on the registered envelope is correct, it is for the appellants to rebut the presumption by leading evidence to rebut the statutory presumption. However, the bald statement of the tenant is not sufficient to rebut the presumption attached to the official work under Section 114 of the Evidence Act, 1872 and Section 27 of the General

Clauses Act, 1897.

Further, the notice Exhibit P.6 was received by one Shiv Nath. The address mentioned is Govt. Sports Authority. The appellant as his own witness has stated that his office address is "Sports and Welfare Institute, Ambala Cantt". The wrong description is not sufficient to rebut the presumption that notice was served. It is not the case of the appellants that Shiv Nath was not an employee of the aforesaid institute. The Postman has not returned registered envelope for the reason that the address is incomplete or the addressee could not be located. Therefore, the notice Exhibit P.6 is also proved to be served upon the appellants as well.

The argument that in terms of Section 67 of the Evidence Act, 1872, the Postman was required to be examined, is misconceived. Section 67 of the Evidence Act, 1872 deals with the proof of a document alleged to be executed by a person. The endorsement of the Postman that the notice has not been claimed is not execution of a document and is not comparable to proof of execution of a document. Therefore, such argument is not tenable.

The judgment of the Bombay High Court in **Vinod Shashank Chakor Pvt. Ltd.'s case (supra),** arises out of the fact that the notice was served upon one one Jane, but it was found that it has not been proved that Jane was the servant of the respondent and thus, the presumption in respect of service of notice stood rebutted. But in the present case, the notice is deemed to be served in view of the statutory presumptions. The said judgment is of no help to the appellant.

The argument that there is waiver of notice dated 7.7.1995 as the landlord has issued another notice dated 7.5.1996, is

misconceived. A perusal of the notice dated 7.5.1996 Exhibit PW2/A, produced by the appellants, shows that a reference has been made to the termination of the tenancy vide earlier notice. In the said notice, the appellants were called upon to vacate the premises on or before 7.6.1996 and to pay the rent from the period May, 1993 to 30.4.1996. The aforesaid notice does not show that there was waiver of earlier notice or there was any act of acceptance of rent after the earlier notice was served. Therefore, the mere fact that another notice was issued is not indicative of waiver of the earlier notice. It may be noticed that the appellant has not made any reference to the second notice or that the first notice stands waived. Therefore, the said argument is not tenable.

The argument that the plaintiff has denied his authority to the Advocate to serve the notice, is misconceived. The plaintiff, while appearing as witness, has deposed that he has served the notice for terminating the tenancy of the defendants from the suit property through his Advocate. In view of the said fact, it cannot be said that the notice of terminating the tenancy of the appellants was not an authorised act.

Thus, I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which may give rise to any substantial question of law in the present second appeal.

Dismissed.

28.8.2007 (HEMANT GUPTA)
Mohinder/ds JUDGE